

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claims 1-16 are pending in this application, with Claims 1, 6, 9, 12 and 15 being independent.

Claims 1-16 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Pietraski* (U.S.2004/0142698) in view of *Cudak et al.* (U.S. 2005/0289256 A1).

Regarding the §103(a) rejection of independent Claim 1, as being unpatentable over *Pietraski* in view of *Cudak*, the Examiner admits that *Pietraski* does not disclose “determining whether a channel quality information indicator is included in the allocation information, the channel quality information indicator represents a channel quality information report”, but asserts that *Cudak* does, and that it would have been obvious to combine the teachings of *Cudak* into the method of *Pietraski*.

To establish a prima facie case of obviousness under U.S.C. §103(a) based upon a combination of references, the cited combination of references must disclose, teach or suggest all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Cudak is directed to an apparatus and method for transmitting/receiving channel quality information (CQI) in a communication system having a frame including subchannels corresponding to the same frequency reuse factor or different frequency reuse factors. A base station (BS) allocates at least one of the subchannels in the frame to a subscriber station (SS), and sends a transmission request for a CQI for a subchannel desired to be received, to the SS. The SS measures channel quality for individual subchannels requested by the BS in response to the CQI request, and transmits

the measured channel quality to the BS. However, *Cudak* does not disclose, “determining whether a channel quality information indicator is included in the allocation information”, as recited Claim 1. That is, *Cudak* does not transmit a channel quality information indicator included in the allocation information, by a Base Station.

Further, *Cudak* does not disclose transmitting uplink data by including channel quality information into the uplink data as the present Application since a channel quality request message is transmitted before downlink data is transmitted and the reporting of channel quality information is performed between intervals in which uplink data is transmitted, as shown in FIG. 6 of *Cudak*. Therefore, it is respectfully submitted that the interpretation asserted by the Examiner is not supported by the disclosure of *Cudak*.

Further, the Examiner asserts that Fig. 3 and paragraph [0030] of *Pietraski* teaches, “generating the channel quality information by measuring the radio channel for communicating with the base station, when the channel quality information indicator is included in the allocation information”, as recited in independent Claim 1. However, Applicants believe that there is no portion of the citations of *Pietraski*, or any other section of *Pietraski*, which teaches this recitation of Claim 1. Accordingly, *Pietraski* has failed to remedy the deficiencies of *Cudak* described above.

Additionally, Examiner asserts that Fig. 3:216, 218 and paragraphs [0030]-[0033] of *Pietraski* teach, “including the channel quality information to the uplink data and transmitting the uplink data to the base station through a radio resource corresponding to the allocation information”, as recited in independent Claim 1. However, Applicants believe that there is no portion of the citations of *Pietraski*, or any other section of *Pietraski*, which teaches “including the channel quality information to the uplink data” of Claim 1. *Pietraski* merely discloses a message related to resource allocation for downlink data rather than a message including allocation information, which is for a terminal to transmit uplink data to a base station as in the present invention. According to *Pietraski*, a terminal has to receive additional resource for reporting channel quality information.

Accordingly, *Pietraski* has failed to remedy the deficiencies of *Cudak* described above.

Further, independent Claims 6, 9, 12 and 15 recite similar features as those discussed above regarding independent Claim 1. For the same reasons argued above for Claim 1, it is respectfully submitted that the Examiner is also incorrect in rejecting Claims 6, 9, 12 and 15. Therefore, based upon the amendments and arguments above, it is respectfully submitted that amended independent Claims 1, 6, 9, 12 and 15 are in condition for allowance.

While not conceding the patentability of the dependent claims, *per se*, Applicants believe, dependent Claims 2-5, 7-8, 13-14 and 16 are also patentable at least for being dependent from independent Claims 1, 6, 9, 12 and 15, respectively.

Accordingly, all of the claims pending in the Application, namely, Claims 1-16 are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,



Paul Farrell

Reg. No. 33494

Attorney for Applicant

THE FARRELL LAW FIRM, LLP
290 Broadhollow Road, Suite 210E
Melville, New York 11747
Tel: (516) 228-3565
Fax: (516) 228-8475
Enclosures: Priority Documents